

REMARKS

Claims 1-12 and 14-28 are pending in the application. Claims 1 and 24 have been amended, leaving claims 1-12 and 14-28 for consideration upon entry of the present Amendment. Applicant respectfully requests reconsideration in view of the amendment and remarks submitted herewith.

Applicant appreciates that the Examiner has indicated allowable subject matter in claims 4-9, 11-12, 16, and 18. However, as explained below, Applicant submits that claims 1-12 and 14-28 are allowable.

Claims 1-3, 10, 14, 15, 17, and 22-28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lentz (DE 29514083). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the * * * claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claims 1-3, 10, 14, 15, 17, 22-23, and 25-26 include the following limitation: "wherein the drainage passage extends through the water reservoir and terminates at a point of discharge from the assembly; wherein the drainage passage isolates water collected in the planter from water in the water reservoir, in use." Claims 24, 27, and 28 include the following limitation: "wherein the drainage passage terminates at a point of discharge from the assembly, wherein the drainage passage isolates water collected in the planter from water in the water reservoir, in use." Lentz does not disclose, either expressly or inherently, those limitations.

First, Lentz does not disclose that the drainage passage isolates water collected in the planter from water in the water reservoir. This is clearly not the case in that not only can water drain from the planter (shoulder 14) through the opening 16 at the bottom thereof, but it is clear that the fountain arrangement might well mix the fountain water with the planter water.

Second, Applicant has amended the claims to include that the drainage passage terminates at a point of discharge from the assembly. This limitation is not disclosed by Lentz. As can be seen in Figure 2, container 10 completely encloses the assembly and thus, liquid does not drain out of the assembly.

Thus, Lentz does not anticipate claims 1-3, 10, 14, 15, 17, and 22-28. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claims 24 and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Donhauser (US 4,371,995). Claims 24 and 28 include the following limitation: "wherein the drainage passage terminates at a point of discharge from the assembly, wherein the drainage passage isolates water collected in the planter from water in the water reservoir, in use." Donhauser does not disclose that limitation.

The Examiner asserts that the drainage passage is represented by elements 68 and 60. Using those equivalents, Donhauser does not disclose that the drainage passage terminates at a point of discharge from the assembly. The only drain in Donhauser is element 50 and that element is not part of the Examiner's equivalent drainage passage 68 and 60. Thus, Donhauser does not anticipate claims 24 and 28. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claims 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lentz. Claims 19-21 include all of the limitations of claim 1. Accordingly, for the reasons discussed above, Applicant respectfully request that the rejection as to claims 19-21 be withdrawn.

In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicant's attorney hereby authorizes that such fee be charged to Deposit Account No. 06-1130.

Respectfully submitted,

CANTOR COLBURN LLP

By: 

Lisa A. Bongiovi
Registration No. 48,933
CANTOR COLBURN LLP
55 Griffin Road South
Bloomfield, CT 06002
Telephone (860) 286-2929
Facsimile (860) 286-0115
Customer No. 23413

November 18, 2003